

REMARKS

United States Serial No. 10/574,866 is a national stage application of International Application No. PCT/CH2004/000622, filed October 13, 2004, which claims the benefit of U.S. Serial No. 60/511,539, filed October 15, 2003. The date of entry into the national stage of United States Serial No. 10/574,866 is April 6, 2006. A preliminary amendment was also filed on April 6, 2006 upon entering the national stage. The 371(c) date (date of date of receipt of the 35 U.S.C. §371(c)(1), (c)(2) and (c)(4) requirements and date of completion of all 35 U.S.C. §371 requirements) is October 18, 2006.

Claims 1-6 are pending. An Office Action mailed July 21, 2009 has subjected claims 1-6 to a restriction requirement. Applicant has made the necessary election in response to the restriction requirement, discussed in detail below. In view of the traversing arguments set forth herein, Applicant respectfully requests that alleged Groups I and II within claims 1-6 be rejoined and allowed.

RESPONSE TO RESTRICTION REQUIREMENT

In the Office Action mailed July 21, 2009, the Examiner required Applicant to elect one of the following Groups based on 35 U.S.C. §121:

Group I (claims 1-3): drawn to a method of preparing food.

Group II (claims 4-6): drawn to a container.

In response to the restriction requirement, Applicant elects to prosecute the claims of Group I, drawn to a method of preparing food (claims 1-3), and traverses the restriction for the reasons set forth below.

The Office Action alleges that the claims of Groups I and II are independent or distinct from each other because the method as claimed in Group I does not require the apparatus as claimed in Group II. In this regard, the Office Action alleges that the method could be performed by spraying the seasoning mixture onto the food product or applying the seasoning mixture by hand. The Office Action also alleges that the apparatus as claimed in Group II could be used in a method other than that recited in Group I. In this regard, the Office Action alleges that the apparatus could be used in a method wherein the food is cooked in the container.

In view of the fact that the present application is a 35 U.S.C. §371 national stage application based on an International Application filed under the Patent Cooperative Treaty (PCT), Applicant respectfully submits that the proper standard for applying a restriction requirement is based on the unity of invention standard recited in PCT.

Rule 13.1 of the Regulations under the PCT allows for the inclusion of different groups in the same international application when the subject matter of those different groups are so linked as to form a single general inventive concept ("requirement of unity of invention"). The unity of invention standard is defined in Rule 13.2 of the Regulations under the PCT which states that unity of invention exists when there is a technical

relationship among the claimed inventions involving the same "special technical features". Rule 13.2 further defines "special technical features" as those technical features that define a contribution which each of the claimed inventions considered as a whole, makes over the prior art.

In the present case, Applicant's respectfully submit that the Office Action fails to allege that the claims of Group I and II do not share a special technical feature which would define a contribution over the prior art. Furthermore, the claims of Groups I and II would not pose an additional search burden on the Office since a method for preparing a foodstuff and a container for containing a foodstuff are intertwined with each other in that they both relate to food preparation.

In view of the above remarks, Applicant respectfully requests a withdrawal of the restriction requirement between Groups I and Group II, and requests the issuance of a formal notice of allowance directed to claims 1-6.

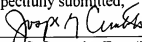
Applicant: Paul Brian KISER

Response to Office Action mailed: July 21, 2009

Response Filed: August 19, 2009

Should the Examiner have any questions about the above remarks, the undersigned attorneys would welcome a telephone call.

Respectfully submitted,



Joseph G. Curatolo, Esq. (Reg. No. 28,837)

Peter R. Detorre, Esq. (Reg. No. 61,801)

Curatolo Sidoti Co., LPA

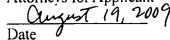
24500 Center Ridge Road, Suite 280

Cleveland, OH 44145

Telephone: 440.808.0011

Facsimile: 440.808.0657

Attorneys for Applicant



Date

Customer No. 23575